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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/823,480

04/13/2004

Todd Landon

L111.12-0105

4953

27367 7590 04/07/2008
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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

04/07/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/823,480	Applicant(s) LANDON ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-148 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-148 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
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| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 4, 2008 has been entered.

The rejection of the claims over Richards has been dropped.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7, 10, 11, 15, 22-39, 77-80 and 93-114 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andreae (WO 96/25857) for reasons of record.

Andreae discloses high temperature cooking sauce. At pages 11-13, au gratin sauce is disclosed. Here cheese is combined with hot water at 70C. This is considered to be the first intermediate. Then vegetable fat and other ingredients, that include egg yolk as an emulsifier, are mixed in

at 70C (158F). This is considered to form the second intermediate. Then the combination is sterilized at 140C, cooled to 60-70C and homogenized at 200-400 bar (2900-5800psig). The final product was considered to be stable. The composition is disclosed at pages 9, Table I and page 11, Table II to contain the basic ingredients required in claim 77. Claim 1 appears to differ from Andreae in the recitation of the form of the emulsion. Although the form of the emulsion is not mentioned, one of ordinary skill in the art would have expected the emulsion of Andreae to be an oil in water emulsion from the relative amounts of oil and water in the emulsion. It is appreciated that Alf redo and hollandaise sauce are not mentioned but it would have been obvious to modify the formulations in Andreae to achieve the desired sauce of the claims.

Applicant argues that Andreae does not disclose a product with 30% moisture. This has been considered but is not persuasive because Table I and II of Andreae shows formulations with more than 30% moisture. With regard to claim 77, it is appreciated that a formulation with milk fat and more than 50% moisture is not shown. Table I shows a formulation with almost 40% water and soybean oil for a bacon and onion sauce. Table II shows an au gratin sauce with cheese as a source of dairy fat and about

30% water. Given these two formulations, it would have been obvious to one of ordinary skill in the art to adjust the formulation with water and dairy fat according to the taste of the ordinary food development artisan. It is appreciated that soy protein is not mentioned but soy proteins are known in the art to be useful alternatives to animal proteins.

Claims 77-83, 86-88, 95-99, 109-114 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muir (2004/0005996) for reasons of record.

Muir discloses protein-stabilized emulsions. At example 1 on page 3, soy protein isolate is combined with water and stirred at 70C. After lowering the pH of the aqueous mixture, oil and sugar are added with mixing. Finally the mixture is treated in a micro fluidizer at 10,000psi. In example 3, freeze thaw stable Hollandaise sauce is made by a similar process. Here the mixture is homogenized or micro fluidized at 5000 psi. The preparations are considered to be oil in water emulsions (page 5, paragraph 0088). Muir draws equivalence between a micro fluidizer and an homogenizer in paragraph 0088. The fat content of the emulsions is shown in Table 1. The claims appear to differ from Muir in the recitation of the method by which the product is made but process limitations do not carry

any weight in product claims. It is appreciated that pasteurization is not mentioned but pasteurizing food is a well-known way of preserving food items. It is also appreciated that Alf redo sauce is not mentioned but no unobvious or unexpected result is seen from the preparation of one type of sauce over the other.

Claims 1-6, 14-16, 20, 22-37, 41-67, 69-70, 75-90, 97-111, 115-119, 121-124, 133-145, 147 & 148 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin (2002/0054939) for reasons of record.

Irwin discloses pH-modified sauces. The formulation for the sauces is shown in the examples. Alfredo sauce and hollandaise sauce are contemplated in paragraphs 0049 and 0054. In example 2, white sauce is prepared from cream, soybean oil, cheese and butter as the fat component. The aqueous component is shown in column 1 of page 2 to contain a number of dissolved solids and an emulsifier. The aqueous ingredients are combined with mixing and heat. Then the fat and aqueous phases are combined together and homogenized at 500 psi. Claim 77 appears to differ from Irwin in the recitation of the preparation of the method by which the product is made but process limitations do not carry any weight in product claims. It would have been obvious to one of ordinary skill in the art would

understand the various process steps in Irwin to be intermediates. The heating step at paragraph 0024 would be expected to form a pasteurizing effect. It is appreciated that hot filling the emulsion is not mentioned. No unobvious or unexpected results are seen from this feature, given the fact that the final product is commercially sterile. It is also appreciated that “oil-in-water” emulsion is not mentioned but one of ordinary skill in the art would expect the emulsion to be an oil-in-water emulsion from the ingredients in the sauce. The extent of cheese in the sauce is enhanced in example 3. No unobvious difference is seen between the stability of Irwin and the stability of the claims. Although buttermilk solids are not mentioned, it would have been obvious to include buttermilk solids to flavor the final desired sauce.

Applicant argues pH adjustment in Muir and the form of the protein. These arguments have been considered but are not persuasive because the claims, as written, do not provide any of these limitations.

Claims 115-124, 137-138, 133-142 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bos (EP 0340857) as further evidenced by Lowe for reasons of record.

Bos discloses an edible and spreadable oil-in-water emulsion (see abstract, line 54). In example 1, cream is added to water, skim milk powder, butterfat and whey protein concentrate. After mixing, pasteurization and homogenization, the product is cooled to form a spread. Although the use of an emulsifier is not mentioned in Bos, the milk protein, casein, is known in the art to be an emulsifier (see page 271 of Lowe) and milk is known in the art to stabilize emulsions (page 273 of Lowe). So even though an emulsifier is not mentioned in Bos, one of ordinary skill in the art would expect the composition to contain an emulsifier because the composition contains casein in the form of skim milk powder. Applicant argues that Bos is a spreadable product and not a sauce base. This has been considered but is not persuasive.

Applicant argues that his product is storable and heat stable. This has been considered but is not persuasive because Bos also has these features (see abstract, last two lines).

Claims 77-88, 93-94, 99, 101-122, 125-128, 133-148 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stuchell (6,759,078) as further evidenced by Lowe for reasons of record.

Stuchell discloses an aseptic cream substitute for use in preparing sauce bases. The sauces made are disclosed at column 7 to include hollandaise, Alfredo and lemon butter sauce. The formulation for the cream substitute is shown in Example 1 to include water phase that is combined with melted butter, homogenized, pasteurized and cooled. Although emulsifier is not mentioned in the product, egg yolks in the hollandaise formulation are known in the art to be emulsifiers and Lowe, at page 271 is relied upon for support of this assertion. The specific processing conditions do not carry any weight in the product claims. Although buttermilk solids are not mentioned, their use would have been an obvious way to create a buttermilk flavor in the product.

Applicant argues that Stuchell is not related to making a sauce. This has been considered but is not persuasive. The claims are directed to the preparation of a sauce base. It is the examiner's position that the cream substitute of Stuchell is a sauce base because it is used as a basic ingredient for sauce preparation, as shown in example 1.

Claims 131-132 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin as applied to claims 77-90, 97-111, 115-119, 121-

124, 133-145, 147 and 148 above, and further in view of Norris (4,005,228) or Youchell (6,265,007) for reasons of record.

The claims appear to differ from Irwin in the recitation of the use of anhydrous fat. Each of Youcheff and Norris teach that anhydrous fat is known in the art. It would have been obvious to one of ordinary skill in the art to utilize the fat of Norris or Youcheff as an obvious alternative source of fat in the Irwin process.

Applicants' arguments are basically directed to the rejection of claims over Irwin which was discussed above.

Claims 129-130 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin as applied to claims 1-6, 8, 9, 14-16, 20, 22-37, 41-57, 59-70, 75, 76-90, 97-111, 115-119, 121-124, 133-145, 147 and 148 above, and further in view of Muir (2004/0005996).

The claims appear to differ from Irwin in the recitation of the use of soy protein in the product. Muir teaches that soy protein has a known use in emulsion. It would have been obvious to one of ordinary skill in the art to utilize soy-based cheese as a substitute for dairy cheese in Irwin in order to provide a vegetarian alternative in the sauce.

Applicants' arguments are basically directed to the rejection of claims over Irwin, which was discussed above.

Claims 1-148 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson in view of Rispoli (4,689,239) and as further in view of by Lowe and Potter.

Peterson discloses sauce preparation. In the photograph after page 118, white roux is made. Here flour and butter are combined and heated. This is considered to be the step at lines 9-11 of claim 1. The selection and preparation of hot milk is considered to be the step at lines 3-6 of claim 1. The hot milk is added to the mixture to make a sauce. This is considered to be the step at lines 7-8. Claim 1 appears to differ from white roux in the inclusion of additional fat in the formulation at lines 14-16 of claim 1, but page 121 of Peterson provides for finishing sauce with additional butter to enrich the flavor of the sauce. So even though white roux does not show adding more fat, it is known in the art to enrich sauces with more butter. Claim 1 appears to differ from Peterson in the recitation of the inclusion of an emulsifier but milk casein and milk are known in the art to be edible emulsifiers (see Lowe at pages 271 and 273). The claim also appears to differ from Peterson in the use of homogenization. It is known in the art

that homogenization is a unit operation for foods that acts to break up fat particles into smaller pieces and Potter is provided for support of this assertion. It is also known in the art that emulsion are stabilized by breaking up fat or oil droplets into smaller pieces and Lowe at page 267 under "The Theory of Emulsification". With the evidence of Lowe and Potter before him, it would have been obvious to one of ordinary skill in the food preparation art to homogenize the sauce of Peterson to stabilize the emulsion. Claim 1 also differs from Peterson in the recitation of the heating temperatures and homogenization conditions used in scaling up a sauce preparation from a home-based level to commercial level. Rispoli teaches that it is known in the art to heat dairy-based sauces to 140-190F (abstract) and homogenize them at 2500/500 psi. If one of ordinary skill in the art wanted to prepare emulsion for commercial applications, it would have been obvious to emulsify the sauce of Peterson using the homogenization of Rispoli in order to prepare a stable emulsion. It is appreciated that all of the ingredients of egg yolk, buttermilk, whey, soy protein, oil and milk fat sources are not mentioned but it is clear from Peterson that sauces are known in the art to be prepared with alternative ingredients and alternative steps in order to optimize the taste of the sauce. To prepare one known

sauce over the other would have been within the abilities of one of ordinary skill in the art. Pasteurization is also well known in the art to provide aseptically processed sauces.

Applicant argues that Peterson is not heat stable. Claims 1 and 77 do not require this feature. Rispoli is relied upon to show the processing of dairy sauce to provide emulsions that are heat stable. Rispoli provides heat treatment of sauces to form the desired sauces (see examples).

This is a continued examination of applicant's earlier Application No. 10/823,480. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the

THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached by dialing 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794

Application/Control Number: 10/823,480
Art Unit: 1794

Page 15